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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DAVID P. MORGAN,

Petitioner,

vs.

ROB JEFFRIES, WARDEN,

Respondent.

) **CASE NO. 3:05 CV 2056**
)
) **JUDGE DAN AARON POLSTER**
)
) **MEMORANDUM OF OPINION**
) **AND ORDER**
)
)
)

Before the Court is the Report and Recommendation of Magistrate Judge Kenneth S. McHargh issued on February 20, 2007 ("R & R") (ECF. No. 13). Petitioner David P. Morgan has filed a 28 U.S.C. § 2254 petition for writ of habeas corpus seeking relief from a 2003 conviction and 12-year prison sentence for drug and weapons violations imposed after a guilty plea. In his petition, Morgan alleges ineffective assistance of trial counsel, denial of right to appeal and a due process/equal protection violation.

After reviewing the briefs, the Magistrate Judge issued an R & R concluding that Morgan's petition is time barred. While the one-year statute of limitations established by the AEDPA expired August 4, 2004, Morgan did not file his petition until August 24, 2005, more than one year later. While Morgan argues that his untimely filing should be excused, the

Magistrate Judge concluded that Morgan failed to act with reasonable diligence to support a claim of equitable tolling.

Under the relevant statute:

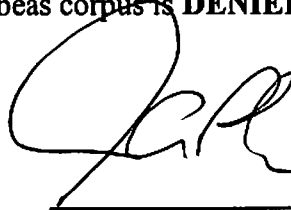
Within *ten days* after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1)(C) (1988) (emphasis added). Here, one month has elapsed since the R & R was issued, and Thompson has not filed an objection or a request for an extension to file one.

The failure to timely file written objections to a Magistrate Judge's R & R constitutes a waiver of a de novo determination by the district court of an issue covered in the report. Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), aff'd, 474 U.S. 140 (1985); see United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

The Court has reviewed the Magistrate Judge's thorough and well-written R & R (ECF No. 13) and hereby **ADOPTS** it. Accordingly, Respondent's motion to dismiss is **GRANTED** and the underlying petition for writ of habeas corpus is **DENIED**.

IT IS SO ORDERED.



Dan Aaron Polster
United States District Judge